

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GENETEC, Inc.,

Plaintiff,

v.

PROS, Inc.,

Defendant.

Case No. 1:20-cv-07959 (JLR)

JOINT RULE 56.1 STATEMENT OF MATERIAL FACT

Defendant PROS, Inc. (“Defendant” or “PROS”), by and through its counsel, Holland & Knight LLP, and having conferred with plaintiff Genetec, Inc. (“Plaintiff” or “Genetec”, and together with PROS, the “Parties”) hereby submits this Joint Rule 56.1 Statement of Material Fact in accordance with Rule 3(I)(iii) of the Individual Rules of Practice of the Honorable Jennifer L. Rochon setting forth all the facts to which the Parties agree in connection with PROS’ motion for an order (i) granting it summary judgment on its counterclaim for breach of contract against plaintiff Genetec, Inc. (“Plaintiff” or “Genetec”), (ii) summarily dismissing Genetec’s sole remaining claim for misrepresentation, and (iii) granting it such other and further relief as the Court deems just and proper pursuant to Rule 56(c) of the Federal Rule of Civil Procedure (the “Motion”).

I. Overview of CPQ Software

1. CPQ software enables companies to streamline and optimize the creation of quotes and orders for their products and services. *See* Declaration of Sunil John in Support of the Motion, dated May 4, 2023 (the “John Dec.”) ¶ 11.

2. CPQ software is comprised of multiple sub-components relating to the various business services that it computes, including, but not limited to, catalog services, configurator services, pricing services, designer services and integration services. *See* John Dec. ¶ 12; Transcript of the Deposition of Sunil John dated January 5, 2023 (the “John Dep. Tr.”)¹15:17-22.

3. These business sub-services are further compromised of more than a 100 micro-services. *See* John Dep. Tr. 20:13-24; John Dec. ¶ 12.

4. As is the cases with all software, these sub-services and micro-services are constantly being updated and improved. *See* John Dep. Tr. 20:13-24; John Dec. ¶ 12.

5. CPQ software often works in tandem with a company’s larger customer relationship management (“CRM”) software platform, which is used to track and manage, among other things, sales, employee productivity, marketing, customer services, and other interactions with customers and prospective customers. *See* John Dec. ¶ 15; John Dep. Tr. 24.

6. The two leading providers of CRM software are Salesforce and Microsoft, whose CRM software is known as Microsoft’s Dynamics 365 (“Dynamics 365”). *See* John Dec. ¶ 16; John Dep. Tr. 16:17-21.

7. CRM software is similarly comprised of sub-services and micro-services that are constantly being updated, changed and improved. *See* John Dec. ¶ 17.

8. Under a software-as-a-service (“SaaS”) model, the software developers, such as PROS or Microsoft, host the software on a web-based platform and sell subscriptions to access the

¹ True and correct copies of the excerpts of the John Dep. Tr. are collectively annexed as Exhibit H to the Declaration of John M. Doherty in Support of the Motion dated May 4, 2023 (the “Doherty Dec.”)

software through a web-browser. *See* John Dec. ¶ 6; Transcript of the Deposition of Andrew Elvish dated November 1, 2022 (the “Elvish Dep. Tr.”)² 37:2-16.

9. By purchasing the subscription rather than the software itself, a company avoids the significant upfront costs associated with hosting and maintaining software on its premises, such as buying computer servers, employing IT staff and paying licensing fees. *See* John Dec. ¶ 7; Elvish Dep. Tr. 37:2-16.

10. Similarly, a company purchasing SaaS no longer needs to purchase each new version of the software because SaaS is constantly being updated and automatically released to ensure companies are running the latest version. *See* John Dec. ¶ 8; Elvish Dep. Tr. 39-40.

II. The Parties

A. Genetec

11. Genetec is a sophisticated international company that primarily sells, *inter alia*, video surveillance and license plate recognition software under both a traditional on-premises model and a SaaS model, as well as accompanying hardware, such as cameras, relating thereto. *See* Elvish Dep. Tr. 26:4-27:4, 36:12-37:13; Amended Complaint (the “Compl.”)³ ¶¶ 2,7.

12. Genetec has a sales department of approximately 550 employees, Elvish Dep. Tr. 24:19-20, a marketing department of approximately 150 employees, *id.* at 16:18-20, a legal department with approximately twelve attorneys, *id.* at 23:7-12, and a digital business solutions department consisting of software engineers, architects and developers with certified expertise in Dynamics 365 and significant experience with CPQ software. Elvish Dep. Tr. 24:19-20, 16:18-

² True and correct copies of the excerpts of the Elvish Dep. Tr. are collectively annexed as Exhibit E to the Doherty Dec.

³ A true and correct copy of the Amended Complaint is annexed as Exhibit A to the Doherty Dec.

20, 23:7-12; Transcript of the Deposition of Jordan Jaumeau dated November 3, 2022 (the “Jaumeau Dep. Tr.”)⁴ 10:10-15, 18:10-24:4, 43:5-47:5.

B. PROS

13. PROS is a public company based in Houston, Texas. *See* John Dec. ¶ 4.

14. PROS was originally founded in 1985 and sells software driven solutions to increase efficiency in revenue management. *See* John Dec. ¶ 18; John Dep. Tr. 14.

15. In 2008, PROS expanded into the quoting solution market. *See* John Dec. ¶ 19; John Dep. Tr. 12.

16. Then, in 2014, PROS further expanded into the market by closing on its acquisition of Cameleon Software (“Cameleon”), a company that had been selling and implementing CPQ software since the late 1980s. *See* John Dec. ¶ 19; John Dep. Tr. 10, 20.

17. Pursuant to the Cameleon acquisition, PROS acquired one hundred percent of Cameleon, including all of its intellectual property, employees and customers. *See* John Dec. ¶ 20; John Dep. Tr. 20.

18. Indeed, PROS retained nearly all of the former Cameleon employees. *See* John Dec. ¶ 20; John Dep. Tr. 20.

19. After the Cameleon acquisition, PROS rebranded Cameleon’s CPQ software as Smart CPQ and continued to successfully implement and develop it. *See* John Dec. ¶ 21; John Dep. Tr. 20.

20. Smart CPQ is part of PROS’ larger suite of artificial intelligence driven software solutions that improve and optimize a company’s sales and operations. *See* John Dec. ¶ 9.

⁴ True and correct copies of the excerpts of the Jaumeau Dep. Tr. are collectively annexed as Exhibit G to the Doherty Dec.

III. Genetec's Solicitation of a Cloud-Based CRM Vendor

21. In and around March 2019, Genetec decided to replace its on-premises CRM software with a cloud-based CRM software platform. *See* Elvish Dep. Tr. 48:3-7.

22. On or about August 2019, Genetec narrowed the list of potential vendors for its new cloud-based CRM software to Salesforce and Microsoft. *See* Elvish Dep. Tr. 62:7-12.

23. In September 2019, Genetec decided to use the cloud-based version of Dynamics 365 as its new CRM platform. *See* Elvish Dep. Tr. 63:16-25, 74:17-23.

IV. Genetec's Solicitation of Cloud-Based CPQ Vendors

24. In conjunction with transferring its CRM to the cloud-based version of Dynamics 365, Genetec also sought to replace its on-premises CPQ software, which Genetec's employees built, with cloud-based CPQ software. *See* Elvish Dep. Tr. 62:7-12.

25. After Genetec limited its prospective cloud-based CRM vendors to Salesforce and Microsoft in or around August 2019, Genetec began conducting due diligence research on potential CPQ vendors with the goal of selecting a CPQ vendor by December 25, 2019. *See* Elvish Dep. Tr. 76:11-23; 84:14-85:11.

26. Genetec's due diligence, included, but was not limited to, "looking at...customer reviews online, looking at websites, talking to tech partners, talking to concurrent technology companies in [its] space, seeing what they're using, generally looking at...what's going on out there in the world." Elvish Dep. Tr. 76:11-23.

27. Genetec's due diligence also included reviewing market research reports on the leading CPQ vendors at the time, including, but not limited to, the research report entitled "Magic Quadrant for Configure, Price and Quote Application Suites" released on October 28, 2019 by

Gartner, Inc. (“Gartner”), a technological research and consulting firm, (the “Gartner Report”).
See Elvish Dep., Ex. 2, Tr. 79:18-25, 108:19-22.

28. In September 2019, Genetec narrowed the list of potential CPQ vendors down to four (4) companies—Apttus, FPX, Experlogix and PROS. *See* Elvish Dep. Tr. 79:17-21.

29. Genetec then contacted each of the aforementioned CPQ vendors to solicit proposals and demonstrations. *Id.*

30. In response to Genetec’s request, on September 18, 2019, PROS virtually conducted, *via* Microsoft Teams, an initial presentation for Genetec that provided a general overview of PROS and its different software solutions, while focusing on Smart CPQ (the “September 2019 Presentation”). *See* John Dec. ¶¶ 22, 24, Ex. 1 (annexing Microsoft PowerPoint slideshow of the presentation); Elvish Dep. Tr. Ex. 1.

31. Thereafter, PROS conducted several more pre-contract presentations for Genetec, including, but not limited to, presentations on October 11, 2019 and November 13, 2019, and provided Genetec with marketing materials and other information relating to Smart CPQ and other software solutions. *See* John Dec. ¶ 25.

32. During this time period, Genetec continued to receive proposals and demonstrations from the other three CPQ vendors and engage in negotiations with them. *See* Elvish Dep. Tr. 79-205; John Dec. ¶ 26.

33. In and around October 2019, Genetec further narrowed its list of CPQ vendors to Experlogix and PROS. *See* Elvish Dep. Tr. 199:11-24, 93:8-15.

34. Thereafter, Genetec continued to engage in negotiations with both Experlogix and PROS. *See* Elvish Dep. Tr. 190;

35. With respect to PROS, Genetec's project leads continued to solicit information from PROS, negotiate the terms and conditions of Genetec's proposed subscription to access Smart CPQ, negotiate the scope of work and training services to be provided by PROS, and push for concessions on prices. Contemporaneously, Genetec's in-house counsel negotiated the legal provisions in the proposed Subscription and Service Agreement, Work Order and Subscription Order and exchanged multiple redlines of the same with PROS' in-house counsel. *See* John Dec. ¶ 26.

36. As part of its negotiations with PROS, Genetec provided PROS with an excel spreadsheet setting forth its core requirements (the "Core Requirements List"). *See* Elvish Dep. Tr. 180-182, Exs. 14-15; John Dec. ¶ 27, Ex. 3 (annexing the Core Requirements List).

V. The Parties Contract

37. After conducting arms-length negotiations, Mr. Elvish, Genetec's behalf, executed a Subscription and Services Agreement (the "SSA"), a Subscription Order Form (the "Subscription Order") and a Work Order (the "Work Order") with PROS on December 24, 2019. John Dec. ¶ 28, Exs. 4-6; Elvish Dep. Exs. 17-19.

38. Approximately 6 months later, on June 4, 2020, Mr. Elvish, on behalf of Genetec, executed Change Order 1.1 to the Work Order, which had an effective date of April 27, 2020 (the "Change Order"). John Dec. ¶ 29, Ex. 7; Elvish Dep. Ex. 22.

39. Mr. Elvish testified that he and his team, as well as Genetec's attorneys, reviewed the aforementioned agreements prior to his signing them and he was authorized to act on Genetec's behalf at the time he signed them. *See* Elvish Dep. Tr. 206:1-208:2, 214:21-216:7, 217:22-219:11,

231:21-235:13.

Dated: New York, New York
May 4, 2023

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